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ABSTRACT

The Revenue Sharing Act appropriated $30.2 billion for distribution to State and local governments, including Indian tribes and Alaskan native villages, according to specified formulas for a 5-year period beginning January 1, 1972. Through June 30, 1974, funds were distributed to 230 Indian tribes located in 29 States and to 93 Alaskan native villages. Thirty-five Indian tribes and Alaskan native villages were visited to examine financial and other records and reports, and to discuss revenue sharing activities with local officials to determine how funds were being administered and used. Office of Revenue Sharing and BIA officials were also visited to obtain information on their administration of the program. Although the Act provides that Indian tribes and Alaskan native villages which perform "substantial governmental functions" are eligible to receive revenue sharing, more reasonable and uniform eligibility determinations are required. Funds allocated to tribes and villages at the county level are based on the ratio of tribe or village population to the county area population. Since this method is inequitable, the Congress should change the procedure so that each tribe or village within a State is allocated a portion of revenue sharing funds available for local government allocation on the basis of the ratio of the tribe or village population to the State population. (NQ)

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ED135545

REPORT TO THE CONGRESS

BY THE COMPTROLLER GENERAL OF THE UNITED STATES

Changes Needed In Revenue Sharing Act For Indian Tribes And Alaskan Native Villages

Department of the Treasury

U.S. DEPARTMENT OF HEALTH EDUCATION & WELFARE NATIONAL INSTITUTE OF EDUCATION

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Although the Revenue Sharing Act provides that Indian tribes and Alaskan native villages which perform "substantial governmental functions" are eligible to receive revenue sharing, more reasonable and uniform eligibility determinations are required. GAO recommends that the Congress direct the Secretary of the Treasury to establish precise guidelines to define "substantial governmental functions."

Funds allocated to tribes and villages at the county level are based on the ratio of tribe or village population to the county area population. This method is inequitable. The Congress should change the procedure so that each tribe or village within a State is allocated a portion of revenue sharing funds available for local government allocation on the basis of the ratio of the tribe or village population to the State population.

RC009716

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MAY 27, 1976

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COMPTROLLER GENERAL OF THE UNITED STATES
WASHINGTON, D.C. 20548

B-146285

To the President of the Senate and the
Speaker of the House of Representatives

This report analyzes provisions of the Revenue Sharing Act relating to the allocation of revenue sharing funds to Indian tribes and Alaskan native villages and to the tribes' and villages' eligibility for and use of these funds. We are recommending that these provisions be changed to correct certain inequities now present.

We made this review because of the unique provisions of the Revenue Sharing Act which relate to tribes and villages. The review was made pursuant to the Budget and Accounting Act, 1921 (31 U.S.C. 53); the Accounting and Auditing Act of 1950 (31 U.S.C. 67); and the State and Local Fiscal Assistance Act of 1972 (86 Stat. 932, 934).

We are sending copies of this report to the Secretary of the Treasury; the Director, Office of Revenue Sharing; the Secretary of the Interior; the Commissioner of Indian Affairs; and the Director, Office of Management and Budget.

Comptroller General
of the United States

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COMPTROLLER GENERAL'S REPORT TO THE CONGRESS

CHANGES NEEDED IN REVENUE SHARING ACT FOR INDIAN TRIBES AND ALASKAN NATIVE VILLAGES
Department of the Treasury

D I G E S T

The Congress should change provisions of the Revenue Sharing Act affecting (1) the allocation procedure for Indian tribes and Alaskan native villages and (2) the tribes' and villages' eligibility for and use of allocated funds. These changes would result in more equitable treatment of the tribes and villages and of other types of local government.

Under the act and regulations, tribes and villages performing "substantial governmental functions" are eligible for revenue sharing funds. The intent of the word "substantial" is not clear. Functions performed by tribes and villages ranged in number from two for several small tribes to many for larger tribes.

The Bureau of Indian Affairs central office lacked sufficient information to evaluate the appropriateness of the eligibility determinations being made by the area offices.

The Congress should direct the Secretary of the Treasury to establish precise guidelines to define "substantial governmental functions." The Secretary of the Interior should direct the Bureau of Indian Affairs central office to coordinate and critically review the eligibility determinations of its area offices.

The Bureau of Indian Affairs and the Office of Revenue Sharing disagreed with GAO's recommendation. The Bureau pointed out that two functions may be substantial for a small tribe. GAO agrees that two functions for a small tribe may be substantial but does not believe this is a sufficient condition to establish eligibility for a local government to directly receive revenue sharing funds. For example, special-purpose units of local governments, such as school, utility, and

library districts, are not eligible for revenue sharing funds even though the services provided by these units may also be substantial for those units.

The Office of Revenue Sharing stated that, if precise guidelines are to be established, the Congress should do it--not executive agencies. GAO believes it is proper for the Congress to direct the Secretary of the Treasury to develop precise guidelines because the Congress often establishes broad general criteria to guide administering agencies in developing detailed regulations.

The Revenue Sharing Act provides that funds be allocated to tribes and villages at the county (geographic area, not county government) level on the basis of the ratio of tribe or village population to the county area population. This method is inequitable to tribes, villages, and other local governments in counties having tribes or villages within their boundaries.

Taxes accounted for 1 percent of revenues generated by the tribes and villages GAO reviewed. Taxes accounted for 75.2 percent of revenues generated from other local government sources.

Because taxes are one factor used to allocate revenue sharing funds, county areas having tribes or villages are penalized in the allocation system as a result of the small amount of taxes generated by tribes and villages.

The tribe or village allocation is based on the measured needs and adjusted taxes of the surrounding county area, not necessarily those of the tribe or village.

Differences in the revenue sharing per capita amounts allotted to tribes and villages within a State result from differences in the allocations to the county areas where the tribes or villages are located--not from the measured need and effort differences between the tribes or villages. In Nevada, allocations per capita ranged from $9.69 to $20.95 solely on the basis of the county location of the tribe.

No instances were found of counties financially assisting tribes or villages. However, States provided varying degrees of financial assistance to tribes and villages.

To correct these inequities the Congress should change the allocation procedure in the Revenue Sharing Act so that each Indian tribe or Alaskan native village within a State is allocated a portion of the State funds available for local government allocation. The portion allocated should be based on the ratio of the tribe or village population to the State population, without regard to the county area or areas in which the tribe or village is situated.

The Bureau of Indian Affairs pointed out that, while allocating funds at the State level appears to have merit, it may lower per capita revenue sharing payments to some tribes. GAO agreed but noted that other tribes would receive larger payments. GAO does not believe that the possibility of lowered per capita distributions to some tribes is as important as (1) eliminating the effect that tribes' allocations currently have on other local governments and (2) achieving a more uniform per capita distribution to tribes and villages.

Related to the allocation of funds is the requirement that they be spent for the benefit of members in the county area from which they were allocated. The boundaries of many tribes do not coincide with and often overlap county boundaries. This makes administering this requirement impractical and restricts a tribe's or village's ability to spend revenue sharing funds for its greatest needs.

This restriction is not placed on other local governments. It should be removed for tribes and villages. The Office of Revenue Sharing and the Bureau of Indian Affairs agreed.

GAO reviewed the financial activities of 35 Indian tribes and Alaskan native villages which were allocated $9.1 million

Tear Sheet

of the $17 million in revenue sharing funds distributed through June 30, 1974, to over 300 tribes and villages. As of June 30, 1974, the 35 tribes and villages had spent 30 percent of the revenue sharing funds available, of which 22.5 percent, the largest amount, was spent for public safety. However, the "uses" of funds, as reflected by financial records, are accounting designations and may have little or no relation to the actual impact of revenue sharing on the recipient government.

CHAPTER 1

INTRODUCTION

Title I of the State and Local Fiscal Assistance Act of 1972 (Public Law 92-512) established the general revenue sharing program. The act appropriated $30.2 billion for distribution to State and local governments, including Indian tribes and Alaskan native villages, according to specified formulas for a 5-year period beginning January 1, 1972. The Congress concluded that both State and local governments faced severe financial problems which required Federal assistance. Unlike other Federal aid to State and local governments which, although substantial, has been primarily for more narrowly defined purposes, the act and implementing regulations placed only minimal restrictions and requirements on the use of the funds.

The Office of Revenue Sharing, Department of the Treasury, is responsible for administering the act, including distributing funds to State and local governments; establishing overall regulations for the program; and providing the accounting and auditing procedures, evaluations, and reviews necessary to insure full compliance with the act.

Approximately $14.3 billion in revenue sharing funds has been distributed for entitlement periods through June 30, 1974. About $4.9 billion went to the 50 State governments and the District of Columbia, and about $9.4 billion went to local governments. Approximately $17 million of the amount distributed to local governments went to Indian tribes and Alaskan native villages.

ALLOCATION PROCESS

Funds are allocated to the States and the District of Columbia by applying two formulas and using the formula which will yield the higher amount for each State. The amounts are then proportionally reallocated to make their sum equal the funds available for distribution. After the total amount is determined for each State, one-third is allocated to the State government and two-thirds are available for allocation to local governments, including counties, municipalities, townships, and Indian tribes and Alaskan native villages.

The intrastate allocation process begins by dividing among county areas (geographic areas, not county governments) the amount set aside for local governments. The amount for each county area is divided into the following parts:

1. An amount for Indian tribes and Alaskan native villages determined by the ratio of their populations to the total population of the county area.

2. An amount for the county government determined by the ratio of county-government-adjusted taxes to total county-area-adjusted taxes. Adjusted taxes are the total taxes of a local government as (1) determined by the Bureau of the Census for statistical purposes and (2) adjusted by excluding taxes for schools and other education purposes.

3. An amount to be distributed to townships determined by the ratio of township-adjusted taxes to total county-area-adjusted taxes.

4. The remaining amount to be distributed to all other local governments.

The amount for townships and the amount remaining for all other local governments are allocated to each township and each municipality, respectively, by using a three-factor formula recognizing population, relative income, and adjusted taxes.

INDIAN TRIBES, ALASKAN NATIVE VILLAGES, AND REVENUE SHARING

There are more than 500 Indian tribes and Alaskan native villages in the United States. The 1970 census recorded 827,000 Indians and natives, of which 477,000 lived on or near reservations and were recognized as eligible for Indian services by the Federal Government.

Through June 30, 1974, revenue sharing funds were distributed to 230 Indian tribes located in 29 States and to 93 Alaskan native villages. Population figures used to distribute revenue sharing funds ranged from 1 for the Cortina Rancheria in California to 89,086 for the Navajo Nation in Arizona, New Mexico, and Utah. Funds distributed to individual tribes and villages for entitlement periods through June 30, 1974, ranged from $72 for the Cortina Rancheria to $5,011,551 for the Navajo Nation.

We reviewed the financial transactions of 30 Indian tribes and 5 Alaskan native villages. They were allocated $9.1 million of the $17 million in revenue sharing funds that had been allocated to tribes and villages.

CHAPTER 2

INDIAN TRIBES AND ALASKAN NATIVE VILLAGES: RELATIONSHIPS TO STATES, FUNCTIONS, AND FINANCIAL ACTIVITIES

RELATIONSHIPS BETWEEN STATES AND TRIBAL GOVERNMENTS

Jurisdiction

The jurisdiction State governments have over tribes and villages varies. Maine has jurisdiction over Indian tribe reservations and Alaska has jurisdiction over native village reservations.

California and Oregon have jurisdiction on reservations for criminal and civil offenses. Arizona, New Mexico, North Dakota, and Idaho have no jurisdiction on Indian reservations. South Dakota has jurisdiction on only one reservation.

Taxing powers

Indians who reside and earn incomes on reservations generally are not subject to State sales, property, or income taxes; however, there are exceptions. Indians living on reservations in Maine are subject to State income and sales taxes, and natives living in villages in Alaska are subject to all State taxes. Oregon can tax certain land and income earned on reservations. The State of Washington can tax sales and land transfers of certain tribes.

State services available to Indians

Most States provide many of the same public services to Indian tribes that they do to other State residents. Two exceptions are North and South Dakota. North Dakota did not normally provide protective services. South Dakota did not provide mental health services.

Many States we visited did not specifically classify State moneys spent for the benefit of reservations. However, we did determine that most State expenditures for reservations were for education. For example, during fiscal year 1972, Arizona spent approximately $11 million for reservations, of which $8.8 million was for education.

GOVERNMENTAL FUNCTIONS PERFORMED BY INDIAN TRIBES AND ALASKAN NATIVE VILLAGES

The 35 tribes and villages reviewed reported that they performed the following types of governmental functions or services. The number of functions performed by each ranged from two (for example, one tribe provided only administration and environmental protection services) for two small tribes to many for the large tribes.

Governmental function or service	Tribes and villages	
	Number	Percent
General and financial administration	35	100
Environmental protection	31	89
Public safety	26	74
Social services for the poor and aged	25	71
Recreation	24	69
Ceremonial and funeral grants	23	66
Health	22	63
Education	20	57
Public transportation	18	51
Libraries	8	23
Economic development	5	14
Housing and community development	4	11
Resource development	4	11
Social development	3	9

FINANCIAL ACTIVITIES OF INDIAN TRIBES AND ALASKAN NATIVE VILLAGES

We obtained all available revenue and expenditure information for the 35 tribes and villages. We did not audit this information; it is presented only to indicate the nature and size of the financial activities of the tribes and villages.

Revenues other than revenue sharing funds

The sources and amounts of revenues received by the tribes and villages, other than revenue sharing funds, for fiscal years ending between July 1, 1973, and June 30, 1974, are summarized below.

Sources of revenue	Amount	Percent
Intergovernmental transfers (note a)	$ 57,919,482	44
Economic development (tribal business enterprises)	55,270,405	42
Earnings on investments	8,618,268	7
Property sales	6,529,072	5
Taxes	1,308,661	1
Miscellaneous	848,561	1
Total	$130,494,449	100

a/Intergovernmental transfers are revenues received by one government from other governments as a share in financing (or as reimbursement for) the performance of governmental functions.

The Navajo tribe received $56 million of the total $130 million, including $31 million from intergovernmental transfers. It received about $16 million from economic development, $4.7 million from interest and dividends on investments, and $4.5 million from property sales. The smallest amount it received was $113,870, from tax revenues.

Expenditures of other than revenue sharing funds

Tribal expenditures of other than revenue sharing funds for fiscal years ending between July 1, 1973, and June 30, 1974, are summarized below.

	Amount	Percent
Social development	$ 28,853,570	25.3
Economic development	23,098,294	20.3
General and financial administration	10,669,398	9.4
Education	10,549,230	9.3
Housing and community development	7,553,548	6.6
Resource development	6,651,344	5.8
Health	5,085,342	4.5
Public safety	4,859,947	4.3
Multipurpose and general government	3,347,870	2.9
Social services for the poor and aged	2,533,167	2.2
Environmental protection	1,907,713	1.7
Recreation	1,298,203	1.1
Ceremonies	55,902	.1
Libraries	54,516	.1
Miscellaneous	182,412	.2
Total operations and maintenance expenses	106,700,456	93.8
Capital outlay	7,065,076	6.2
Total expenditures	$113,765,532	100.0

Revenue sharing receipts

The tribes and villages reviewed received $8.1 million in revenue sharing funds from the beginning of the program through June 30, 1974. 1/ Tribes and villages that deposited the funds in interest-bearing accounts before expenditure earned about $0.5 million in interest. Thus, the 35 tribes and villages had about $8.6 million available for expenditure during this period.

Revenue sharing expenditures

As of June 30, 1974, the tribes and villages spent $2.6 million, or 30 percent of the total revenue sharing funds available for expenditure. We pointed out in earlier reports 2/ on the revenue sharing program that fund "uses" reflected by the financial records of a recipient government are accounting designations, which may have little or no relation to the actual impact of revenue sharing on the recipient government.

For example, in its accounting records, a government might designate its revenue sharing funds as used for financing environmental protection. The actual impact of revenue sharing on the government, however, might have been to reduce the amount of local funds which would otherwise have been used for environmental protection, thereby permitting the "freed" local funds to be used to reduce tax rates, to increase expenditures in other program areas, to avoid a tax increase or postpone borrowing, to increase yearend fund balances, and so forth.

Tribe and village expenditures of revenue sharing funds are summarized in the following table.

1/The amounts received are less than the amounts reported as allocated on p. 2 because the fourth-quarter payments for the fiscal year 1974 distributions were not received by the tribes and villages until after June 30, 1974.

2/"Revenue Sharing: Its Use by and Impact on State Governments," B-146285, Aug. 2, 1973, and "Revenue Sharing: Its Use by and Impact on Local Governments," B-146285, Apr. 25, 1974.

	Operations and maintenance expenses	Capital outlay	Total	
			Amount	Percent
Public safety	$ 399,077	$ 178,503	$ 577,580	22.5
Housing and community development	24,615	313,831	338,446	13.2
Multipurpose and general government	81,624	210,147	291,771	11.4
Financial administration	208,406	7,183	215,589	8.4
Recreation	56,440	154,066	210,506	8.2
Economic development	36,283	121,340	157,623	6.1
Health	82,706	47,252	129,958	5.1
Education	5,115	120,689	125,804	4.9
Social services for the poor and aged	94,236	11,035	105,271	4.1
Other	1,078	91,702	92,780	3.6
Environmental protection	58,474	15,075	73,549	2.8
Public transportation	17,618	37,295	54,913	2.1
Libraries	592	1,495	2,087	0.1
Unclassified (note a)	-	-	191,959	7.5
Total	$1,066,264	$1,309,613	$2,567,836	100.0

a/A few recipient tribes and villages did not designate the specific uses of revenue sharing funds. Therefore, these expenditures were not classified.

CHAPTER 3

PROBLEMS IN REVENUE SHARING ACT AS IT RELATES TO INDIAN TRIBES AND ALASKAN NATIVE VILLAGES

ELIGIBILITY CRITERIA NEED CLARIFICATION

Approximately 200 of the more than 500 recognized Indian tribes and Alaskan native villages did not receive revenue sharing funds. In most cases, this was due to determinations that the tribes and villages did not meet the various eligibility criteria.

Eligibility determinations were made primarily by two Federal offices, without specific guidelines or centralized reviews to assure consistent decisions. According to section 108(b)(4) of the act, an Indian tribe or Alaskan native village must have a recognized governing body which performs "substantial governmental functions" to be eligible for revenue sharing funds. However, neither the act nor the regulations define "substantial governmental functions."

At the request of the Office of Revenue Sharing, the Bureau of Indian Affairs, in cooperation with the Bureau of the Census, was primarily responsible for providing the Office with a list of tribes and villages eligible to participate in the program.

To determine eligibility, Bureau of the Census criteria were used to define a government with substantial governmental functions. These criteria state that, to be regarded as a government, an entity must:

--Be organized and possess some type of corporate powers.

--Have governmental character, indicated by officers that are popularly elected or appointed by public officials.

--Possess substantial autonomy, such as the power to raise a portion of its revenue from resources it controls and to administer its activities independent of external administrative controls.

These criteria do not provide a basis for distinguishing between general-purpose governments and limited-purpose governments. As pointed out in chapter 2, the types of services the eligible tribes and villages performed ranged in number from two for two small tribes to many for the larger tribes.

The Bureau of Indian Affairs central office relied primarily on its area offices to provide a list of eligible tribes and villages. According to central office officials, eligibility determinations were made by the area offices on the basis of the general Bureau of the Census criteria.

Bureau of Indian Affairs central office files contained sketchy and incomplete eligibility documentation. For example, they did not contain a complete list of eligible tribes and villages for each Bureau of Indian Affairs area office. Information provided by area offices did not always show the basis for determining eligibility. Some area offices sent lists of eligible tribes but without comments. Consequently, the Bureau of Indian Affairs central office lacked sufficient information to evaluate whether the eligibility criteria were consistently applied.

Recommendations

To provide for more reasonable and uniform eligibility determinations, we recommend that the Congress require the Secretary of the Treasury to establish more precise guidelines to define "substantial governmental functions."

To assure that the guidelines are applied consistently, we also recommend that the Secretary of the Interior require that initial eligibility determinations of each Bureau of Indian Affairs area office be reviewed by the central office and compared with eligibility determinations of other area offices.

Suggested language for amending the act to implement this recommendation is included as part of appendix I.

Agency comments and our evaluation

The Office of Revenue Sharing disagreed with our recommendation that "substantial governmental functions" should be further defined by either the Bureau of Indian Affairs or the Office of Revenue Sharing. It pointed out that native American units of government vary dramatically in needs, historical roles, size, and levels of sophistication and, therefore, governmental functions vary widely. It added that, if precise guidelines are to be established, the Congress should do it--not executive agencies.

The Bureau of Indian Affairs said it failed to see how our suggested legislative language would do other than formalize the present principles which it now uses to determine tribe and village eligibility. The Bureau noted that it would not be appropriate to impose eligibility standards on Indian governments more restrictive than those imposed on

"units of local government" generally. The Bureau also noted that the sophistication, needs, and structures of Indian governments are so diverse that efforts to apply a consistent, detailed formula for determining what actually constitutes "substantial governmental functions" could well create greater inequities than those that might now exist.

The Bureau of Indian Affairs concluded that (1) inclusions of the proposed language in the Revenue Sharing Act will not result in consistency and (2) its area staffs will continue to use the Census Bureau principles as guidelines for determining "substantial governmental functions" in evaluating a tribe's performance. The Bureau added that including our recommended language in the act will not, in itself, resolve any "problem" of determining what constitutes "substantial governmental functions" and that two functions may be "substantial" for a small tribe.

We agree that two functions for a small tribe may be substantial. However, we do not believe that this is a sufficient condition to establish eligibility for a local government to directly receive revenue sharing funds. For example, special-purpose units of location governments, such as school, utility, and library districts, are not eligible for revenue sharing funds even though the services provided by those units may also be substantial for those units.

Therefore, we believe additional criteria should be established for determining if tribes and villages should receive revenue sharing funds. These additional criteria should be based on current activities, using data on the number, kind, and extent of services being provided by a tribe or village government.

The Bureau of Indian Affairs pointed out, however, that the eligibility criteria should not be more restrictive than those imposed on other "units of local government." Our proposed legislative language does not single out tribes and villages for revised eligibility determination; rather, it requires evaluation of all units of local government by the same criteria.

The need for such criteria is more important in the case of tribes and village governments than in the case of other governments receiving revenue sharing funds. The revenue sharing allocation formula allocates funds to tribe or village governments strictly on the basis of population. No other factors, such as need and effort to meet need, are considered.

We agree with the Bureau that simply changing the act will not in itself resolve the problem of determining what

constitutes "substantial governmental functions." However, our recommendations include requiring the Bureau of Indian Affairs central office to review its area office determinations to assure that the new criteria are applied consistently.

We are not as concerned about whether the Congress or an executive agency ought to establish the criteria as we are about their being established. The Congress often establishes broad general criteria to guide administering agencies in establishing more detailed regulations, but detailed criteria could be developed by the Congress if it so chose.

ALLOCATION OF FUNDS TO INDIAN TRIBES AND ALASKAN NATIVE VILLAGES SHOULD BE MADE MORE EQUITABLE

The Revenue Sharing Act provides that if there is an eligible Indian tribe or Alaskan native village within a county area, the tribe or village must be allocated a portion of the funds available for all local governments within the county area.

General allocation procedure

As noted in chapter 1, the revenue sharing fund allocation procedure begins with the allocation of funds to the 50 States and the District of Columbia. From this State allocation, two-thirds are available for allocation to local governments.

The local governments' shares of each State's allocation are allocated first to the county areas, using a formula which takes into account each county area's population, relative income, and adjusted taxes. Part of the amount so determined is then allocated to tribes and villages on the basis of the ratio of their population to the county's population. The remaining amount is divided into an amount for the county government, an amount available for subsequent allocation to all townships in the county (determined by the ratio of township-adjusted taxes to total county-area-adjusted taxes), and an amount available for subsequent allocation to all other local governments; that is, municipalities in the county. The specific amount allocated to each township and each municipality is then calculated on the basis of population, relative income, and adjusted taxes.

Three allocation inequities

The factors in the revenue sharing formulas are used to measure specific parameters for allocating revenue sharing

funds. Population is used to measure a government's size; per capita income, a government's need; and adjusted taxes, a government's effort to meet its need. If there is an Indian tribe or Alaskan native village in the county area, constitutes "substantial governmental functions." However, these measurements lead to inequitable allocations. We found three major inequities during our review.

The first problem involves measuring county area governments' efforts to meet their needs by measuring adjusted taxes. Only 1 percent of the revenues generated by the tribes and villages visited came from taxes. In contrast, taxes represented 41.1 percent of the revenues of all local governments and 75.2 percent of the revenues from the local governments' own sources. Consequently, the small contribution the taxes of tribes and villages make to the total taxes collected by all governments in a county may reduce the revenue sharing funds allocated to governments in counties with tribes compared to counties without tribes.

For example, adjusted taxes per capita are increased an average of $4.09 for all counties in Nevada with Indian tribes when population and adjusted taxes attributable to tribes are excluded from the calculation. This increase in adjusted taxes per capita generally would increase the revenue sharing allocation of governments in those counties. The following table shows per capita adjusted taxes for all counties in Nevada calculated with and without the population and adjusted taxes of Indian tribes.

	Indian population	Adjusted taxes per capita including Indians	Adjusted taxes per capita excluding Indians	Difference in adjusted taxes per capita
Elko County	1,050	$ 90.42	$ 95.63	$5.21
Mineral County	462	95.40	100.97	5.57
Washoe County	1,012	124.17	124.83	0.66
Churchhill County	234	79.92	81.48	1.56
Clark County	228	138.76	138.86	0.10
Douglas County	373	201.49	209.35	7.86
Humboldt County	406	137.48	145.88	8.40
Lyon County	209	107.92	110.14	2.22
Nye County	128	233.74	239.69	5.95
Pershing County	111	154.21	160.85	6.64
White Pine County	85	94.41	95.21	0.80
Average difference				$4.09

In addition, of the 11 States where the tribes and villages we visited were located, 7 placed some form of taxing

restriction on the tribes or villages. As the revenue sharing formula now operates, even though tribes and villages contribute little to the total county area tax amount that is used to measure the need of the local governments in a county area, the tribes and villages are allotted funds from the amount calculated to be available for allocation to the local governments in the county area. This results in other local governments receiving less than if the county area did not have a tribe or village.

The second problem occurs because the tribe or village allocation is based on the measured needs and efforts of the county area, not necessarily those of the tribe or village. The allocation to a tribe or village is based strictly on the ratio of its population to the population of the county where it is located. Therefore, the difference in the revenue sharing per capita amount between tribes and villages results from the allocations to the county areas in which they are located, not from economic differences between the tribes and villages.

The following table illustrates the differing revenue sharing amounts per capita allocated to Indian tribes in Nevada for the year ending June 30, 1976. Duckwater Tribal Council had the highest allocation per capita--$20.95--and Walker River Paiute Tribe had the lowest allocation per capita--$9.69. The difference is based solely on the county areas where the tribes are located. The average allocation per capita for all tribes in Nevada was $16.23.

	Indian population 1973	Initial allocation	Allocation per capita
Fallon Paiute Shoshone Tribe	234	$ 2,940	$12.56
Las Vegas Colony Council	92	1,779	19.37
Moapa Business Council	136	2,630	19.39
Washoe Tribal Council	373	4,468	11.98
Shoshone Paiute Business Council	672	12,188	18.14
Te-moak Western Shoshone	378	7,456	19.72
Fort McDermitt Tribal Council	373	7,563	20.28
Winnemucca Colony Council	33	669	20.28
Yerington Paiute Tribal Council	209	3,039	14.54
Walker River Paiute Tribe	462	4,475	9.69
Duckwater Tribal Council	80	1,676	20.95
Yomba Tribal Council	48	1,005	20.94
Lovelock Tribal Council	111	1,906	17.17
Pyramid Lake Paiute Tribe	421	6,968	16.55
Reno Sparks Tribal Council	591	9,782	16.55
Goshute Business Council	51	727	14.25
Ely Colony Council	34	484	14.24

The third problem concerns the financial relationship between a county area government and an Indian tribe or Alaskan native village within that county. We found no instances where counties provided financial assistance to tribes and villages. In contrast, we found State governments having legal relationships with and giving financial assistance to tribes and villages to varying degrees. This indicates that a stronger relationship exists between States and tribes and villages than between counties and tribes and villages.

Related comments from other studies

A Brookings Institution study entitled "Monitoring Revenue Sharing" noted:

> "Allocations [to Indian tribes and Alaskan native villages] are completely unrelated to amounts of revenue raised by the aided entities. The resulting per capita amounts differ widely from tribe to tribe and have no consistent relation to comparative financial needs or own revenues. Where Indians make up a sizable part of a county's population, the amounts allocated to local governments in that county can be significantly curtailed. In retrospect, the law would have been far simpler to administer and perhaps more equitable, had it provided for a straight per capita Indian allocation to apply uniformly nationwide or for entire states. If the necessary amounts were to come out of the aggregate local share for states having Indian tribes, only a nominal reduction would be made for numerous local governments, in contrast to the considerably greater curtailments that now can occur for those few governments located in counties having Indian tribes or Alaskan villages. Another alternative, of course, would be to provide financial aid to tribes and villages entirely outside the revenue-sharing system."

A study by the Stanford Research Institute entitled "General Revenue Sharing Formula Alternatives" noted:

> "The level at which allocations are made to Indian tribes and Alaskan native villages causes a unique subset of problems associated with the hierarchical structure. Their inclusion at the county-area level often diverts allocations from a county government or muncipality that provides public services to the persons counted in the tribal population. Even

> though the total GRS [General Revenue Sharing] allocation to tribes and villages is only 0.1% of the national total (about $6 million in EP 4 [Entitlement Period 4]), individual county and city government allocations can be substantially altered by the presence of a tribal council or business council within the county-area. It has been argued that tribal or native village governments receive monies intended for general-purpose governments within a county-area, but need not perform services, need not levy taxes on their residents, and need not have an impoverished constituency to receive funds since they receive GRS allocations based solely on their resident reservation population as a percent of the county-area population."

A report entitled "State Responsibility for Public Services and General Revenue Sharing" by Messrs. Stephens and Olson, University of Missouri, noted:

> "The inclusion of tribal councils and villages of native Americans as recipient local units is something of an anomaly. There is little doubt that the national government should be providing assistance to native Americans, but GRS is an extremely poor vehicle for this purpose, as is apparently the Bureau of Indian Affairs. Under GRS, amounts going to the individual units are whipsawed back and forth by the factors that affect the interstate and intrastate (intercounty) allocations. These extraneous factors bear no discernable relationship to the needs of the various tribal groups involved. Some other mechanism should be found to provide these aids and do it in a more appropriate manner."

Conclusions and recommendation

In our opinion, the current method used to allocate revenue sharing funds to Indian tribes and Alaskan native villages is inequitable to tribes and native villages within a State and to other forms of local government, such as counties, municipalities, and townships. Per capita revenue sharing amounts allocated to tribes and villages within a State vary considerably because the amounts depend, through the formula process, on the population, taxes, and resident income of other local governments in the county in which the tribes and villages are located. Also, the governments of the county, municipalities, and townships that are located in a county area that contains a tribe or village often receive less revenue sharing than they would if the tribe were

located elsewhere because tribes frequently pay no taxes to help draw funds, through the formula process, for allocation to the governments in the county area.

We recommend that the Congress change the allocation procedure in the Revenue Sharing Act so each Indian tribe or Alaskan native village within a State is allocated, on the basis of the ratio of each tribe or village population to the State population, a portion of the State funds available for local government allocation, without regard to the county area or areas in which the tribe or village is located.

Suggested language for amending the act is included as part of appendix I.

Agency comments and our evaluation

The Bureau of Indian Affairs pointed out that, although allocating revenue sharing funds at the State level to tribes and villages appears to have merit, it may lower per capita revenue sharing payments to many tribes and villages. Both the Office of Revenue Sharing and the Bureau suggested that further analysis be made to determine the actual effects of such a change. The Bureau added that it was uncertain about the effects on other units of local government.

We agree that our recommendation would result in lower per capita revenue sharing payments to some tribes and villages, but other tribes and villages would receive higher per capita amounts. In addition, we do not believe that the possibility of lowered per capita distributions is as important as (1) eliminating the effect that tribes' allocations currently have on other local governments and (2) achieving a more uniform per capita distribution to tribes and villages. We believe the more uniform per capita distribution is necessary for tribes and villages because the allocation formula does not measure their (1) need and (2) efforts to meet that need.

If the Congress wants specific information on the impact that our recommendation would have on allocations to tribes, villages, and other local governments, the Office of Revenue Sharing could provide a detailed analysis.

EXPENDITURE LIMITATION SHOULD BE REMOVED

Related to the allocation of funds to tribes and villages is the Revenue Sharing Act requirement that the funds be spent for the benefit of members in the county area from

which the funds were allocated. This provision was included in the act to prevent tribes and villages whose reservations included part of several counties from spending all their funds for the benefit of members living in only one county.

Commenting on this provision, the Chief Counsel, Office of Revenue Sharing, advised one multicounty tribe that:

> "* * * this provision does not require Indian governments to expend each county allocation in the county from which it originated. Rather, Indian tribes are only required to expend the funds in such a manner that the Indians from a particular county will benefit in proportion to the amount of revenue sharing funds which their county contributed to the expenditure. * * *
>
> "If a multi-county project is decided on, the Indian government should debit from the various county allocations in proportion to the benefit which will accrue to tribal members in the affected counties."

Of the 35 locations visited, 18 were multicounty reservations. Six of the 18 were unaware of the provision. Of the 12 tribes that knew about the provision, only 7 said they knew how to comply:

--Three had attempted to comply by allocating funds to counties on the basis of tribal population, enrollment, or council representation.

--One allocated funds on the basis of need.

--One spent funds on programs that benefited all members.

--One attempted to divide funds by county allocation, but it did so incorrectly.

--One had not spent any revenue sharing funds.

The tribe that spent funds on programs benefiting all members was the only multicounty tribe that, in our opinion, spent revenue sharing funds in full compliance with section 123(a)(8) of the act. Allocations to counties on the basis of population, enrollment, council representation, or need would not usually result in amounts proportionate to the amounts originally allocated from the respective county areas and, therefore, probably would not comply fully with the act and regulations.

According to several tribes, some county allocations were too small to be effectively used in those counties. For example, one multicounty tribe that received an allocation of $71 from one county made the following statement in a letter requesting advice on how to comply with the act.

> "There is no way we can spend $71.00 in * * * County other than give it to the * * * family as they are the only tribal members in the county."

The tribal secretary told us it would be impossible to comply strictly with the act and still spend revenue sharing funds constructively.

Several tribes said county and State borders were not recognized by Indian tribes in the administration of tribal affairs; districts, communities, or other tribal governmental units frequently crossed county borders.

The act does not similarly restrict other governments that receive revenue sharing funds, although the jurisdictions of various local governments include portions of more than one county.

Conclusions and recommendation

In our opinion the requirement of the act that funds be spent for the benefit of members in the county area from which the funds were allocated is impractical to administer and inhibits a tribe's or village's ability to spend revenue sharing funds for its greatest needs. In addition, other local government revenue sharing recipients whose boundaries cross several county lines are not similarly restricted.

We recommend, therefore, that the restriction on the use of revenue sharing funds by tribes and villages be limited to that placed on other local governments and that the county area spending requirement for tribes and villages be eliminated from the Revenue Sharing Act.

Suggested language for amending the act is included as part of appendix I.

Agency comments

Both the Office of Revenue Sharing and the Bureau of Indian Affairs agreed with this recommendation. The Office of Revenue Sharing noted that legislation proposed by the President would eliminate the objectionable requirement.

CHAPTER 4

SCOPE OF REVIEW

We visited 35 Indian tribes and Alaskan native villages, examined financial and other records and reports, and discussed revenue sharing activities with local officials to determine how funds were being administered and used. We obtained information about annual revenues and expenditures from available records and discussions with local officials, but we did not verify this information. The tribes and villages and States we visited are listed in appendix II of this report.

We also met with officials of the Office of Revenue Sharing and the Bureau of Indian Affairs to obtain information on their administration of the revenue sharing program and their opinions on topics discussed in this report.

Suggested Revisions to Sections 108(d)(1), 108(b)(4), and 123(a)(8) of the State and Local Fiscal Assistance Act of 1972

We suggest section 108(d)(1) of the act be amended to read as follows:

"(d) Governmental Definitions and Related Rules.

"For purposes of this title--

"(1) Units of local government.

"The term 'unit of local government' means the Government of a county, municipality, township, or other unit of Government below the State which is a unit of general government (determined on the basis of the same principles as are used by the Bureau of the Census for general statistical purposes) and which performs substantial governmental functions. Such term also means, except for purposes of paragraphs (1), (2), (3), (5), (6)(C), and (6)(D) of subsection (b) of this section, and, except for purposes of subsection (c) of this section, the recognized governing body of an Indian tribe or Alaskan native village which performs substantial governmental functions. The Secretary shall issue regulations establishing criteria, including but not limited to the number, size, and kind of services performed, for determining whether a unit of local government or the recognized governing body of an Indian tribe or Alaskan native village is performing 'substantial governmental functions.'"

"(2) * * *

We suggest also that section 108(b)(4) of the act be amended to read as follows:

"(b) Allocation to county governments, municipalities, townships, etc.

* * * * *

"(4) Indian tribes and Alaskan native villages.

"If within a State there is an Indian tribe or Alaskan native village which has a recognized governing body which performs substantial governmental functions, then before applying subsection (a) of this section there shall be allocated to each such tribe or village a portion of the amount allocated to that State for the entitlement period which bears the same ratio to such amount as the population of such tribe or village within that State bears to the population of that State. If this paragraph applies with respect to any State for any entitlement period, the total amount to be allocated to county areas under subsection (a) of this section shall be appropriately reduced to reflect the amount allocated under the preceding sentence, and the population of any tribe or village receiving such allocation shall not be counted in determining the allocation under subsection (a) of the county area in which such tribe or village is located. If the entitlement of any such tribe or village is waived for any entitlement period by the governing body of that tribe or village, then the provisions of this paragraph shall not apply with respect to the amount of such entitlement for such period."

* * * * *

We also suggest that section 123(a)(8) be deleted.

LIST OF INDIAN TRIBES AND ALASKAN NATIVE VILLAGES INCLUDED IN OUR REVIEW

State	Tribe or village
Alaska	Akiachak
Alaska	Kipnuk
Alaska	Kwethluk
Alaska	Quinhagak
Alaska	Tununak
Arizona	Gila River Indian Community
Arizona, New Mexico, and Utah	Navajo Nation
Arizona	Papago Tribe
Arizona	Salt River Pima-Maricopa Indian Community
Arizona	White Mountain Apache Tribe
California	Mission Band of Indians of Campo Community
California	Pauma Band of Mission Indians
California	Rincon, San Luiseno Band of Mission Indians
Idaho	Nez Perce Tribe of Idaho
Idaho and Nevada	Shoshone Paiute Tribes of the Duck Valley Reservation
Maine	Passamaquoddy Tribe, Indian Township
Maine	Passamaquoddy Tribe, Pleasant Point
Maine	Penobscot Tribe, Indian Island
Montana	Assiniboine and Sioux Tribes of the Fort Peck Reservation
Montana	Chippewa Cree Tribe of the Rocky Boy's Reservation
Montana	Confederated Salish and Kootenai Tribes of the Flathead Reservation
New Mexico	Isleta Pueblo
New Mexico	Santa Ana Pueblo
New Mexico	Zuni Tribe
North Dakota and South Dakota	Sisseton-Wahpeton Sioux Tribe
North Dakota and South Dakota	Standing Rock Sioux Tribe
North Dakota	Three Affiliated Tribes of the Fort Berthold Reservation
Oregon	Confederated Tribes of the Umatilla Indian Reservation
South Dakota	Cheyenne River Sioux Tribe
South Dakota	Lower Brule Sioux Tribe of the Lower Brule Reservation

APPENDIX II

State	Tribe or village
South Dakota	Rosebud Sioux Tribe
Utah	Ute Indian Tribe of Uintah and Ouray
Washington	Shoalwater Bay Indian Tribal Organization
Washington	Spokane Tribe
Washington	Confederated Tribes of the Colville Reservation

APPENDIX III

OFFICE OF THE SECRETARY OF THE TREASURY

OFFICE OF REVENUE SHARING
2401 E STREET, N.W.
COLUMBIA PLAZA HIGHRISE
WASHINGTON, D.C. 20226

March 5, 1976

Dear Mr. Lowe:

Thank you for your letter of February 19, 1976, enclosing a copy of the draft GAO report "Changes Relating to Indian Tribes Needed in Revenue Sharing Act." We appreciate the opportunity to review this report and, in accordance with the discussions of our staff members, the Office of Revenue Sharing has requested review and comments from the Commissioner of Indian Affairs. The Commissioner's reply is attached to this letter.

The GAO report recommends that Congress should change certain provisions of the State and Local Fiscal Assistance Act affecting the eligibility, allocation procedure and fund uses of Indian tribes and Alaskan native villages. Specifically, the report recommends: a) that the Congress direct the Secretary of the Treasury to establish precise guidelines to define "substantial governmental functions" of Indian tribes and Alaskan native villages, so that selection of revenue sharing recipients would become more "reasonable" and "uniform"; b) that revenue sharing funds be allocated to tribes and native villages on a statewide basis rather than the present county basis, and that tribal or village population be retained as the allocation measure; and c) that the present provision of the law be modified so that tribes and villages not be compelled to spend money for their members on the basis of the county area from which funds have been allocated.

We disagree with GAO's assumption that "substantial governmental functions" can or should be further quantified either by the Bureau of Indian Affairs or by the Office of Revenue Sharing. Native American units of government vary dramatically in both needs, historical roles, size and levels of sophistication, and therefore governmental functions vary widely. Should a decision

be reached to establish more specific criteria than presently being applied, we recommend that Congress, and not executive agencies, determine what such criteria should be.

The draft report recommends that the allocation process for native American governments be changed so that individual tribes and villages would receive their allocations from a state's total local government share rather than from a county area's share as in the present law. As partial justification for this change, the report asserts that the relationship between individual native American governments and the states is stronger than between them and units of local government.

Research on allocation of revenue sharing, including that specifically cited in the GAO reports, suggests that Indian tribes or native villages frequently benefit at the expense of other units of local government in the county. Under these circumstances, raising tribes and villages to the State level for allocation purposes would result in lower per capita revenue sharing payments to many tribes and villages. We suggest that before any recommendation to change the allocation level be made, detailed analyses be made of the actual effects which such a change would have.

The report does not accurately characterize the relationship between State governments and the native American governments situated within their boundaries. There are vast differences in the type of services provided, and the degree of jurisdiction exercised by State governments on tribal lands. The list of native American governments surveyed in the report contains both Federally-recognized and State-recognized tribes but the report makes no analysis of this distinction.

We agree with the recommendation that the revenue sharing act should be modified so that tribes and villages would no longer be forced to spend revenue sharing funds for the benefit of members in the county area from which the funds were allocated. Legislation proposed by the President would eliminate this requirement.

Again, I appreciate the chance to offer our comments on your draft report. We will be pleased to discuss our observations and comments with you.

Sincerely,

John K. Parker
Acting Director
Office of Revenue Sharing

Mr. Victor Lowe
General Government Division
General Accounting Office
Washington, D.C. 20548

Enclosure

cc: Commissioner Morris Thompson

United States Department of the Interior
BUREAU OF INDIAN AFFAIRS
WASHINGTON, D. C. 20245

IN REPLY REFER TO:

Tribal Government Services
BCCO 3724

MAR 3 1976

Mr. John K. Parker
Acting Director
Office of Revenue Sharing
2401 E Street, N. W.
Columbia Plaza Highrise
Washington, D. C. 20226

Dear Mr. Parker:

We have been asked to provide you with our comments on certain recommended amendments to the General Revenue Sharing Act as it pertains to the involvement of Indian tribes and Alaska Native villages in the program. The recommended amendments are contained in a General Accounting Office draft report.

The GAO draft report recommends dropping the restriction that Indian tribes and Alaska Native villages expend funds for the benefit of members in the county area from which the funds were allocated. We would concur in that this discriminates against tribes and villages as it is not a requirement for other recipients. Further, the finding that multicounty tribes are unable to comply for the reasons cited is probably correct. We have previously been assured by the Treasury Department that such an amendment will not alter the current right of the tribes to limit benefits resulting from expenditure of the funds to Indians.

The GAO draft report also recommends that Congress direct the Secretary of the Treasury to establish precise guidelines to define "substantial governmental functions". Initially, we fail to see that the proposed language in Appendix II would do other than to formalize for the Bureau the use of the same principles as are used by the Bureau of the Census. We say Bureau, for we cannot conclude that GAO intends by this inclusion to remove from the program the role the BIA now plays in making the determination it presently does as to the tribes and villages currently performing substantial governmental functions. Correctly, the GAO draft report points out that we now use these Census Bureau principles.

We believe that it would not be appropriate to impose for Indian governments eligibility standards which are more restrictive than those imposed on "units of local government" generally. Indeed, the sophistication, needs and structure of Indian governments are of so diverse a nature

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that efforts to apply a consistent, detailed formula for determining what actually constitutes "substantial governmental functions" for tribes could well create greater inequities than those that might now exist.

As pointed out by the GAO draft, other studies have recognized this to the extent that they recommend that rather than seeking uniformity to include Indian government in the General Revenue Sharing program, it would be preferable to have a separate "program" for them. We understand that consideration of funding tribes under General Revenue Sharing at the national level was rejected because of a feeling that other units of local government should not receive funds with respect to tribes if such units did not fully provide service to tribes within their geographic area. Hence, the current county area deduction system was adopted for tribal funding under the program.

We cannot see that the inclusion of the proposed language will result in the "consistency" that GAO is seeking. Bureau Area staff have been and will continue to use as guidelines the Census Bureau principles for determining "substantial governmental functions" in evaluating a tribe's performance. Including language in the Act to that effect will in itself not resolve any "problem" of determining what constitutes "substantial governmental functions". The two functions the GAO report states were found by the Bureau of Indian Affairs to be performed by the small tribe may still remain for it "substantial".

The GAO draft report recommends that a tribe or village allocation be determined on the basis of the ratio between each tribe's or village's population and that of the state in which it is located. On first glance this might have merit. However, we would like to run some test cases before a final position is taken. Quite possibly such an approach might run counter to the interest of tribes in securing maximum allocations and we are also uncertain as to what effect such a change would have on other units of local government. While some of the justifications for the recommendation appear valid, we question a basic one that most states provide many of the same public services to Indian tribes as to other state residents.

The GAO draft report appears very weak in its understanding of state-tribe relationships. Indians are citizens of the United States and of the states in which they reside with the right to vote in Federal, State, and local elections and have the right to participate in State and local governmental programs on the same basis as other citizens. However, states (and their subdivisions) do not have civil or criminal jurisdiction over Indians on Federal Indian reservations unless some or all of such

jurisdiction is acquired pursuant to Federal law. State taxation or state regulation of businesses within Federal Indian reservations is only permissible to the extent that it does not interfere with tribal self-government or Federal regulation of such businesses. The GAO draft report overlooks the latter two points and seems to base its conclusions on the first (i.e. citizenship rights) point without recognizing the wide variation in governmental services and jurisdictional situations on Federal Indian reservations.

We further note that the GAO draft report makes no distinction between Federal and state Indian reservation situations, although both were represented in the GAO sample.

We would appreciate a more extensive opportunity to comment on the GAO report before it is issued.

Sincerely yours,

Commissioner of Indian Affairs

PRINCIPAL OFFICIALS

RESPONSIBLE FOR ADMINISTERING ACTIVITIES

DISCUSSED IN THIS REPORT

	Tenure of office	
	From	To
SECRETARY OF THE TREASURY:		
William E. Simon	Apr. 1974	Present
George P. Shultz	June 1972	Apr. 1974
John B. Connally	Feb. 1971	June 1972
DIRECTOR, OFFICE OF REVENUE SHARING:		
Jeanna D. Tully	Mar. 1976	Present
John K. Parker (acting)	Aug. 1975	Mar. 1976
Graham W. Watt	Feb. 1973	Aug. 1975
SECRETARY OF THE INTERIOR:		
Thompson S. Kleppe	Oct. 1975	Present
Kent Frizzell (acting)	July 1975	Oct. 1975
Stanley K. Hathaway	June 1975	July 1975
Kent Frizzell (acting)	May 1975	June 1975
Rogers C. B. Morton	Jan. 1971	May 1975
COMMISSIONER, BUREAU OF INDIAN AFFAIRS:		
Morris Thompson	Nov. 1973	Present
Vacant	Feb. 1973	Oct. 1973
Louis R. Bruce	Aug. 1969	Jan. 1973